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UNITED STATES GOVERNMENT

Memorandum

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593-2025-4000
593-2025-6000
593-2075
593-6087
712-5042-6767
712-6783-8000

RELEASE

TO : Robert S. Fuchs, Director
Region 1

DATE: JAN 24 1977

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: District 1199 Mass., National Union of Health Care Employees, RWDSU, AFL-CIO (Baystate Medical Center)
Case No. 1-CB-3502 (CG)

COPIES PLEASE

This matter was submitted to Advice on the issue of whether certain health care institution employees engaged in a "strike . . . or other concerted refusal to work" within the meaning of Section 8(g) of the Act without the filing of proper notices.

FACTS

The Employer, a Section 2(14) health care institution, operates a 1000-bed hospital in Springfield, Massachusetts. District 1199 Mass., National Union of Health Care Employees, RWDSU, AFL-CIO (hereafter referred to as Union) and the Employer are parties to a current collective bargaining agreement covering certain employees employed in the engineering department. There are approximately 34 employees in the bargaining unit.

According to the Employer, it is the long-standing past practice, although not contained in a specific written work-rule, for certain employees in the engineering department to report to and "sign-in" at the office of the assistant general foreman of engineering (hereafter referred to as the office) some 15-20 minutes prior to their actual scheduled starting time of 8:00 a.m. They are then expected to change into company-provided uniforms so that they are in their assigned work areas prepared to commence their work at 8:00 a.m. 1/ It also appears that the Employer's past practice also allowed the employees some amount of "wash up" time on the clock at the end of the shift. The incidents at issue here were apparently precipitated by the Employer's alleged unilateral change of a term and condition of employment, i.e., abolishing the compensable "wash up" time at the end of the shift. 2/

1/ Apparently, the employees required by the Employer to comply with this procedure are not compensated for the time between when they actually sign-in and 8:00 a.m.

2/ The Union has filed a charge with the Region in Case No. 1-CA-14475 against the Employer concerning the alleged change in such term or condition of employment. The charge is pending investigation. It does not appear that the Union has filed a grievance concerning this dispute under its labor agreement.

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On the morning of November 1, 1976, 3/ Union Steward Provost (an engineering employee) entered the office at approximately 7:59 a.m. followed by 21 of the 27 unit employees required to sign in, 4/ which included another Union steward. All the individuals were in street clothes. Provost waited until the clock in the office showed 8:00 a.m., and then he signed the log-in sheet with the other employees following suit. The employees then changed into their company-provided uniforms and proceeded to their assigned work areas. The assistant general foreman and the general foreman were in the office during the signing-in. There is no evidence that either supervisor questioned the employees as to their deviation from past practice, spoke with the employees about their not being prepared for work, or made mention of potential discipline resulting from their action at the time.

The next morning on November 2, approximately 23 employees, including two Union stewards, basically repeated the same signing-in procedure they had adopted the preceding day, i.e., reporting at or after 8:00 a.m. in street clothes. On this occasion their action was observed not only by the assistant general foreman and the general foreman, but also by the Personnel Officer, who spoke with Steward Provost in the office shortly after 8:00 a.m. She asked him what was going on concerning the men changing the previous signing-in procedure. Provost allegedly responded that they had been advised by the Union to do it. He also indicated that some of the unit employees had been complaining of certain changes in coffee breaks and other matters. The Personnel Officer advised Provost that the Employer considered the new sign-in practice to be a concerted job action in violation of the contract and the Act, and that it was considering the appropriateness of filing an unfair labor practice charge.

On the morning of November 3, eleven employees, including a Union steward, signed-in at 8:00 a.m. While nine employees were wearing their uniforms, none of these individuals were at their work stations at 8:00 a.m. in uniform as required by past practice. This was the last date on which the instant job actions occurred.

The Employer contends that the job action resulted in a loss of some 5-15 minutes of lost work time per employee per day, depending upon the employee's work area. It has been estimated that collectively the job action caused from 1½ to 6 man-hours a day of lost time. The Employer received no notice from the Union complying with Section 8(g) of the Act before the job action was initiated, nor does the Union contend that any was sent. The Employer filed the instant charge on November 2, which attacks the legality of the employees' job action.

3/ All dates occurred in 1976.

4/ Of the 34 unit employees, four boiler room employees are not required to sign-in, two employees work another shift, and one employee was on a leave of absence.

ACTION

It was concluded that a Section 8(g) complaint should issue, absent settlement, to place this novel matter before the Board, based upon the view that the Union herein engaged in a "strike . . . or other concerted refusal to work" within the meaning of Section 8(g) of the Act, without filing the proper ten day notices required therein. 5/

In this regard, it is initially noted that the General Counsel had administratively adopted the position that Section 8(g) proscribes only union conduct, i.e., economic action engaged in by or attributable to a Section 2(5) labor organization. 6/ It was concluded that the job action herein in which the employees participated was attributable to the Union. 7/ In this regard, it was noted that the events of November 1 were apparently led by a Union steward (Provost). This same steward on November 2 admitted to the Employer that the job action was taken at the instigation of the Union. A second Union steward joined in the three day job action on two of the days. These same stewards were apparently actively involved in the presentation of grievances with the Employer on behalf of the Union. 8/ Under these circumstances, where the job action was directly related to a "grievance" concerning terms and conditions of employment, the stewards were deemed Section 2(13) agents of the Union, 9/ who acted within the scope of their general authority. 10/

With regard to whether the Union's conduct herein fell within the ambit of Section 8(g), it is noted that the Board has held that Section 8(g) will be interpreted according to its "plain language", and that, therefore, "any strike, picketing, or other concerted refusal to work" at the premises of a health care institution is proscribed in the absence of proper notices. 11/ Likewise, the Board has concluded that the requirements of Section 8(g) are "clear and absolute", and has noted that the Section is devoid of any modifying language with respect to the type of economic

5/ Before proceeding to complaint, the Region should obtain from the Charging Party a "CG" charge. The instant charge is docketed as a "CB" case, although it alleges a Section 8(g) violation.

6/ See General Counsel's Quarterly Report of July 13, 1976, pp. 4-5; Walker Methodist Residence and Health Care Center, Inc., Case No. 18-CA-4876, JD-572-76. This position has not as yet been passed upon by the Board.

7/ See generally, General Counsel's Monthly Report on Health Care Institution Cases, dated January 24, 1975, at Section II.

8/ See Article XX, section 1 of the parties' collective bargaining agreement.

9/ See Carpenters Local 2067 (Batterman Constr., Inc.), 166 NLRB 532, 540; cf. also Glaziers, Local 513 (Linclay Corp. of America), 191 NLRB 461; International Brotherhood of Electrical Workers, Local 640, and its Agent Glynn Ross (Brown Wholesale Electrical Company), 190 NLRB 456.

10/ See ILWU (Sunset Line and Twins Co.), 79 NLRB 1487, 1509.

11/ See United Association of Journeymen, Local 630 (Lein-Steenberg), 219 NLRB 837, 840.

pressures generated. 12/ While the Union has not as yet claimed that its job action does not fall with the parameters of 8(g) because its limited duration had no adverse impact on patient care, such defense would be considered without merit, as even a ten minute work stoppage has been held to be a violation of 8(g) where the Union did not file the appropriate notices. 13/ With respect to the actual nature of the job action, it was concluded that it constituted a "strike . . . or other concerted refusal to work" within the meaning of Section 8(g). It would be argued that on the three mornings in question, the employees involved were not in their work areas in uniform prepared for work at 8:00 a.m. consistent with past practice. Consequently, they were not performing all of their job duties between 8:00 a.m. and the time each employee arrived at his work station in uniform prepared for work. Therefore, the employees were in effect concertedly withholding their services for that period of time. 14/

Finally, the Union has suggested that the job action was taken in response to the Employer's unlawful unilateral change in a term and condition of employment, namely, the abolishment of compensable "wash up" time at the end of the shift. 15/ Even assuming, arguendo, that this charge is found to be meritorious, such unfair labor practice, standing alone, does not arise in a context of the exercise of the employees' free choice of a collective bargaining representative, nor does the evidence indicate it was aimed at undermining a bargaining relationship. Thus, the job action was not viewed as in protest of serious or flagrant unfair labor practices as in Mastro Plastics Corporation v. N.L.R.B., 350 U.S. 270 (1956), which the legislative history to Section 8(g) indicates would be excused from that section's notice requirements. 16/

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H.J.D.

12/ See District 1199, National Union of Hospital & Health Care Employees, RWDSU, AFL-CIO (Parkway Pavillion), 222 NLRB No. 15, at p. 3 of slip opinion.

13/ District 1199-E, National Union of Hospital & Health Care Employees (CHC Corporation - Pikesville Nursing Center), Case No. 5-CG-3, JD-546-76; see also District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (United Hospitals of Newark), Case No. 22-CG-3, JD-840-76.

14/ See, e.g., Elk Lumber Co., 91 NLRB 333; Scott Lumber Co., 117 NLRB 1790; cf. also Shelley & Anderson Furniture Mfg. Co., 199 NLRB 250, 263, enf. 497 F.2d 1200 (C.A. 9, 1974).

15/ See n. 2, supra.

16/ Cf. Dow Chemical Company, 212 NLRB 333, enf. as modified 530 F.2d 266 (C.A. 3, 1976); see also Arlan's Department Store of Michigan, Inc., 133 NLRB 802.